

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

APR 30 2018

PER _____
DEPUTY CLERK

ANTONIO MARCOS GUTIERREZ,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

Civil No. 18:CV-933

COMPLAINT FOR DAMAGES

Plaintiff, Antonio Marcos Gutierrez, (hereinafter, "Plaintiff" or "Mr. Gutierrez") proceeding pro se, brings this action against the defendant, United States of America, (hereinafter, "Defendant" or "Government") to obtain compensation for the damages suffered by the negligence of federal employees while acting within the scope of their employment, and officials duties at the time the injuries to plaintiff occurred.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claim asserted against the United States of America, because plaintiff has complied with all prerequisites to suit under the Federal Tort Claims Act, ("FTCA"), 28 U.S.C. § 2671, et seq., in that:

(a) On October 10, 2017, plaintiff timely filed an administrative claim (via SF-95 Form) for the matters in dispute in this action in the amount of \$25,000 with the Federal Bureau of Prisons, ("BOP") Northeast Regional Office, ("NERO").

(b) The defendant, by and through its agency, the Federal Bureau of Prisons, sent to plaintiff a settlement offer notice, on March 1, 2018, in the amount of \$100. A copy of which is attached to this Complaint as Exhibit A.

2. This action is timely commenced following the settlement offer notice.

3. This Court has supplemental jurisdiction over all the claims asserted in

this action under 28 U.S.S. §§ 1346(b); 1367(b), 18 U.S.C. §4042, because they are so related to the type of claims asserted against the defendant, and the minimum duty to care to protect prisoners from that type of claim.

4. Venue is proper in this judicial district because the actions and omissions complained herein occurred in this judicial district. [28 U.S.C. § 1402(b)].

PARTIES

5. Plaintiff is a federal inmate actually confined at the Federal Correctional Complex, Coleman, Florida, but that at the time of the events concerning to this complaint, he was confined at the United States Penitentiary, USP-Lewisburg, Pennsylvania, his actual mail address is: Coleman USP-1, PO Box 1033, Coleman, Florida 33521-1033, and his Federal Register Number is 76346-065.

6. Defendant United States of America, is being sued under the Federal Tort Claim Act, as found in Title, 28 U.S.C. §§ 1346(b); 1402, 2401(b) and 2671-2680, for the personal injuries, caused by the negligent and wrongful acts or omissions of some Bureau of Prisons employees, upon plaintiff, while acting within the scope of their office or employment.

PREVIOUS LAWSUITS

7. Plaintiff have not filed any other lawsuits in stated or federal court dealing with the same facts involved in this action, and/or any other civil action.

FACTS

8. On or about November 24, 2016, while confined at the USP-Lewisburg, Pennsylvania, plaintiff woke up with fever and diarrheas, that appeared to be caused by a dinner, (served previous night) consisting of spaghetti with ground beef, that looked improperly cook, as the pasta was hard and the meat still red, rare and with a foul smelling.

9. That condition lasted from November 24 to December 5, 2016, during the first 6 days plaintiff did not receive medical attention for that ailment in spite

of his various attempts to obtain some type of medical relief. At the beginning were three diarrheas at day, thereafter, those turned to fourth and ultimately into five times, the latest with blood in the excreta.

10. In or around November, 29, 2016, plaintiff's cellmate, (Guzman Badilla Corona) commenced to present fever, and similar discomfort, plaintiff had commenced to feel before, (id) and then both were moved to a Unit that appeared to have been prepared to house all the inmates that had the same symptoms presented by plaintiff and his cellmate. At this time, and for the first time plaintiff received medical attention, (mostly consisting of a gallon of water with some type of serum..) that diminished the diarrheas, stopped the bleeding, and permitted the retention of food in his stomach. By that time, plaintiff had, however, lost around 40 pounds of corporal weight and was presenting an excruciating pain in his shoulders that had immobilized his arms to the extreme that his cellmate, (Mr. Badilla) had to assist him to raise from the bunk and even hold the food tray for him to eat.

10. Plaintiff, lasted in that condition, for around 2 months, without medical attention, and obligated to purchase pain medication from commissary because BOP medical personnel at USP-Lewisburg steadily refused to provide any medication for that sequel from the stomach infection contracted while at USP-Lewisburg.

11. Thereafter, plaintiff was transferred, from USP Lewisburg, and for the first time, while in holdover at Oklahoma, plaintiff received medical attention for the matters related to his shoulders and incapacity to move/raise his arms.

12. Subsequently, plaintiff arrived to Coleman, USP-1, where he commenced to receive treatment for his medical conditions, including with a therapist, (who found the lack of strength in plaintiff's arms and shoulder, but that cannot explain the reason for that debilitating condition.

13. With the pass of the time, plaintiff is recuperating his normal corporal weight, his mobility and strength, but he is still not at 100% recuperated, as he

still continue having stomach problems, like reflux, heartburn, occasional pain, etc.

14. During all these time plaintiff was never informed that the stomach infection he suffered, had been assessed by BOP medical personnel as "an infectious gastroenteritis and colitis," and/or that it had been later determined to be a "Salmonella outbreak" involving more than 40 inmates at the time.

STATEMENT OF THE CLAIMS

15. It is pro se plaintiff layman opinion that as result of the default of the defendant, by and through their agents, servants, and employees, [known to the United States, but known to plaintiff] while acting with the scope of their employment, he suffered excruciating and unnecessary and avoidable pain, extended diarrheas, vomits for an inexcusable period of time, that put his health and life at risk, and may have left a sequel of illness or medical conditions for the rest of his life.

16. Further, that these injuries and affections, endured by plaintiff, resulted by the negligence, wrongful acts, or omissions of the agents, servants, or employees of the Defendant, United States, while acting under the color of the law, as follows:

(a) By lacking of care and the following of the basic safety procedure to: store, cook, and serving meals, (expressly meat products) to inmates housed at the SMU program at USP-Lewisburg, Pennsylvania.

(b) By lacking of a timely and adequate response and medical treatment, upon the first indicia of some type of infectious diseases affecting a group of inmates at the same time, and/or after confirming that there was a "Salmonella outbreak at USP-Lewisburg."

(c) By denying medical treatment of plaintiff's ailments (shoulder pain and lost of strength, etc.) derived from the "Salmonella" infection, and could result in

chronic medical conditions, and affect plaintiff quality of life while in prison and upon release from such.

PRAYER FOR RELIEF

17. Based upon the foregoing, pro se plaintiff, respectfully requests that This Court find that the defendant is liable for its negligence, wrongful acts, or omissions related to the Salmonella outbreak at USP-Lewisburg, during the months of November-December, 2016, and for its failure to provide timely and adequate medical treatment to plaintiff on the medical sequels he endured post contracting of the salmonella infections, and therefore, render judgment in favor of plaintiff and against the defendant:

(A) In the sum to be shown at trial, but in not event less than the \$25,000.00 asked in the SF-95 form;

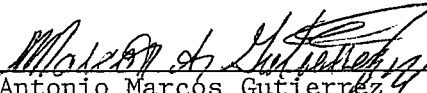
(B) Including whatever pre-and postjudgment interest may be allowed by law, and the cost of suit.

(C) And/or provide plaintiff with any other remedy, if there is other by law that this Court deems proper and just.

DECLARATION UNDER PENALTY OF PERJURY

18. The undersigned, pro se plaintiff in the above actions, declares under penalty of perjury that he has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Coleman USP-1, Coleman, Florida, on this April 18, 2018.


Antonio Marcos Gutierrez
Pro Se Plaintiff
PO Box 1033-76346065
Coleman, FL 335221-1033

April 17, 2018

Office of the Clerk
U.S. District Court
Middle District of Pennsylvania
228 Walnut Street
PO Box #983
Harrisburg. PA 17108

Re: Antonio Marcos Gutierrez v. United States of America,

Dear Clerk:

Enclosed please find a complaint for damages, under the Tort Claim Act, against the United States of America, along with a copy of such, and the documents required to proceed as pauper, and the notice/waiver of summon to the defendant in order to simplify/expedite the process, and in the event that those document may be needed at this time.

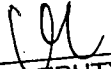
If, I have make some mistake, omitted or, sent a document that is not needed at this time, does not hesitate to correct me for that error, but I'm trying to avoid delay and take advantage that the prison is not in lockdown at this time, and I have better access to the prison law library. Otherwise, if everything is in order, please forward these documents to the assigned judge or magistrate for disposition.

Thank you for your time and effort in this matter.

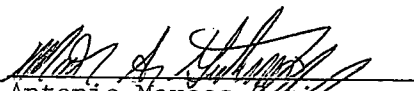
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Cordially,

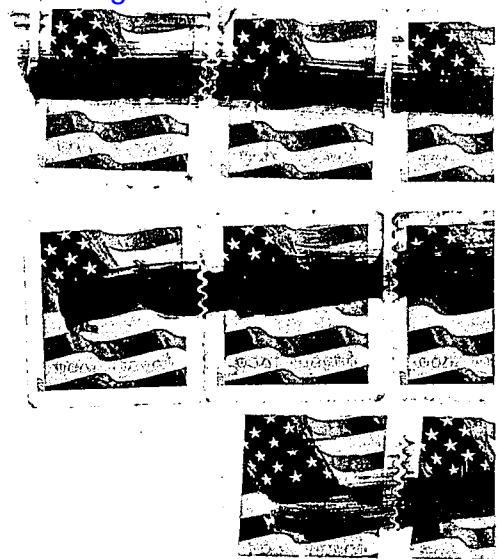

Antonio Marcos Gutierrez
Pro Se Plaintiff
FCC Coleman USP-1
PO Box 1033-76346065
Coleman, FL 33521-1033

c: file
rl.
Encl: (5)

Antonio Marcos Gutierrez
Federal Correctional Complex
Coleman, USP-1
PO Box 1033-76346065
Coleman, FL 33521-1033



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M.D. of Pennsylvania
228 Walnut Street
P.O.Box 983
Harrisburg, PA 17108

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MAIL ROOM
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33521-1023

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FOR FURTHER INFORMATION OR
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FOR FORWARDING TO ANOTHER
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DATE

MAIL ROOM STAFF

